bear its casualties. See BOHLEN, "Drafting of Workmen's Compensation Acts," 25 HARV. L. REV. 328, 329. In the setting of the Massachusetts Act, however, the decision seems sound.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — COMMON RISKS. — An employee working in a trunk factory was directed to go to the factory maintained by the same company on the opposite side of the street to letter a trunk. While returning, after he had completed his task, he slipped on the ice in the street and sustained fatal injuries. *Held*, that the accident arose out of his employment. *Redner* v. *H. C. Faber & Son Co.*, 119 N. E. 842 (N. Y.).

The greatest difficulty in determining whether an accident arises out of an employment is experienced in cases where the workman's injuries result from risks run by every one, yet in contact with which he is brought in the course of his employment. Most courts have applied the test that there must exist a frequency or peculiarity of subjection to the common risk to make the accident one arising out of the employment. *Andrew* v. *Failsworth Industrial Society*, [1904] 2 K. B. 32; *Pierce* v. *Provident Clothing & Supply Co., Ltd.*, [1911] 1 K. B. 997; *Fensler* v. *Associated Supply Co.*, 1 Cal. I. A. C. Dec. 447. But what frequency or peculiarity is required has never been definitely established, and it is precisely this uncertainty that has caused such a hopeless conflict among the decisions involving the question. Late English and American decisions, however, have discarded this test and have adopted one more determinate in character. It suffices that the risk resulting in the accident was one which the workman incurred through his employment, and the fact that the risk was a common one also, avails nothing. *Dennis* v. *White & Co.*, [1917] A. C. 479; *Bett* v. *Hughes*, [1914] 52 Scot. L. Rep. 93; *Milwaukee* v. *Althoff*, 156 Wis. 68, 145 N. W. 238. This reasoning has been applied in the principal case. Since this criterion dispenses with the indefinite elements of "frequency" and "peculiarity," it is more certain and will cause much less confusion in the cases. See also 25 HARV. L. REV. 530–37.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — STATUTE PROVIDING EITHER COMPENSATION OR DAMAGES: WHEN RECOVERY AGAINST EMPLOYER IS NOT A BAR TO RECOVERY AGAINST NEGLIGENT THIRD PARTY. — Under Workmen's Compensation Act of Rhode Island an employee negligently injured by a third party may take action against him or the employer, but shall not recover both damages and compensation. LAWS, 1912, c. 831, art. 3, 21. A written agreement for compensation was, in accordance with the act, filed and approved in the Superior Court. The employee now sues the tortfeasor in accordance with an agreement with his employer providing that the employee should, out of the money thus recovered, repay the employer the sums advanced for compensation. Did receipt of compensation under these circumstances bar recovery against the tortfeasor? *Held*, it did not. *Mingo* v. *Rhode Island Co.*, 103 Atl. 965 (R. I.).

The case has apparently no American precedents. Under the English Act of 1897, repealed by that of 1906, an employee might at his option proceed against either employer or tortfeasor, but not both. 60 & 61 VICT. c. 37. Under this act an agreement to take compensation "without prejudice" did not bar action against the tortfeasor. *Oliver* v. *Nautilus Steam Shipping Co.*, [1903] 2 K. B. 639, 19 T. L. R. 607. Under the English Act of 1906 an employee may "take proceeding" against both parties, but is entitled to but one recovery. 6 EDW. VII. c. 58. Under this act an agreement to refund compensation on subsequent recovery from the tortfeasor was not such "recovery" as to bar action. *Wright* v. *Lindsay and Others*, [1912] S. C. 189, 49 Scot. L. R. 210. The Rhode Island statute has similar provision to the later English act, and ex-

plicitly provides that the employer who pays compensation shall be indemnified and "subrogated to the rights of the employee to recover damages therefor." This shows an action by an employee cannot be barred by filing a compensation agreement, for, if so, an employer who is subrogated to the right of the employee could never sue after such agreement. In view of English precedents and the evident intent of the act the decision is sound.

MUNICIPAL CORPORATIONS — REDELEGATION OF DELEGATED POWERS — DISCRETION — STATUTE. — By statute the city council of Springfield was given authority to license and regulate the transportation of passengers for hire by motor vehicle. (1916, MASS. STAT. c. 293.) Another statute provided that the city council might delegate the granting of licenses to other officials and might regulate the granting. (1913, MASS. STAT. c. 429.) The city council passed an ordinance regulating the fee and requirements and delegated to the police commission authority to grant licenses where the applicants were found to be "suitable to conduct such business" and the vehicles, after inspection, "safe and proper." The defendant was convicted for operating without a license. *Held*, conviction sustained. *Commonwealth* v. *Slocum*, 119 N. E. 687 (Mass.).

It is settled that the legislature may delegate powers concerning municipal affairs to municipal corporations. *Welch* v. *Swasey*, 193 Mass. 364, 79 N. E. 745; *State* v. *Carpenter*, 60 Conn. 97, 22 Atl. 497. When the method of exercising the power is not prescribed by the legislature, the local body may use reasonable discretion. *City of Lake View* v. *Tate*, 130 Ill. 247, 22 N. E. 791; *Halsey* v. *Rapid Transit Co.*, 47 N. J. Eq. 380, 20 Atl. 859. See 1 DILLON, MUNICIPAL CORPORATIONS, 5 ed., § 242 *et seq.* This discretion as to method of exercising the power cannot be delegated to any other body. *Johnson* v. *The Mayor and Council of City of Macon*, 62 Ga. 645; *Conn.* v. *Glavin*, 67 Conn. 29; *Commonwealth* v. *Maletsky*, 203 Mass. 241, 89 N. E. 245; *State* v. *Garibaldi*, 44 La. Ann. 809, 11 So. 36; *Day* v. *Green and Another*, 4 Cush. (Mass.) 433. However, ministerial or administrative functions may be delegated. *Los Angeles, etc. Corp.* v. *Los Angeles*, 163 Cal. 621, 126 Pac. 594; *Harcourt* v. *Asbury Park*, 62 N. J. L. 158, 40 Atl. 690. The police commission has been allowed to decide whether moving pictures were immoral. *Block* v. *City of Chicago*, 239 Ill. 251, 87 N. E. 1011. An official has been allowed to decide the number and position of saloons. *People* v. *Gregier*, 138 Ill. 401, 28 N. E. 812. And it has been held that discretion in an administrative function may be used whether the ordinance gives it or not. *Harrison* v. *People*, 222 Ill. 150, 78 N. E. 52. The ordinance in the principal case does not set a fixed standard. This is immaterial, for it is impossible to set one, and public policy demands protection of the public. See *Block* v. *City of Chicago*, *supra*, 262, 3. And so the statute in the principal case which allows the above rule of common law is merely affirming the common law and should be construed in accordance with it. *Hewey* v. *Nourse*, 54 Me. 256; *Baker* v. *Baker*, 13 Cal. 87.

PROXIMATE CAUSE — WHAT CONSTITUTES IN INSURANCE CONTRACTS. — The plaintiff's vessel lying at anchor 1000 feet off shore was damaged by a concussion of the air caused by an explosion due to fire on shore. Plaintiff's ship was insured in defendant company. The policy covered loss by fire without expressly excepting explosions. *Held*, insurance company is not liable. *Bird* v. *St. Paul Fire & Marine Ins. Co.*, 120 N. E. 86 (N. Y.).

A policy of fire insurance covers all damage which, within the meaning of the policy, is the proximate consequence of the fire. *Lynn Gas, etc. Co.* v. *Meriden Fire Ins. Co.*, 158 Mass. 570, 33 N. E. 690. Logically, damage by concussion from a distant explosion of powder caused by fire is a proximate consequence of the fire, since no independent cause intervenes, but the few cases